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Attorneys for Defendants ARS NATIONAL SERVICES, INC.
and JASON A. HOWERTON

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA,
SAN JOSE DIVISION

RAYMOND CHARLES MEYER,

Plaintiff,

v.

ARS NATIONAL SERVICES, INC.,
D/B/A ASSOCIATED RECOVERY
SYSTEMS, a California corporation, and
JASON A. HOWERTON, individually
and in his official capacity,

Defendants.

CASE NO. C07-06422 JF (PVT)

The Hon. Jeremy Fogel

**DEFENDANTS ARS NATIONAL
SERVICES, INC. and JASON A.
HOWERTON'S NOTICE OF
MOTION AND MOTION TO
CONSOLIDATE CASES AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[FED. R. CIV. PROC. 42a]

Date: July 25, 2008

Time: 9 a.m.

Courtroom: 3

[Proposed to be consolidated with Case
No. C 08-01842 RMW]

Action Filed: December 20, 2007

Trial Date: None

TO ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE THAT ON July 25, 2008, or as soon as the matter
may be heard in Courtroom 3, located at 280 S. First Street #2112, San Jose,
California 95113, Defendants ARS NATIONAL SERVICES, INC. and JASON A.

1 HOWERTON (collectively, "ARS") will and hereby do move for an order
 2 consolidating the instant matter with the lawsuit entitled Meyer v. ARS National
 3 Services, Inc., et al., United States District Court Case No. C 08-01842 RMW. The
 4 instant motion is brought pursuant to Fed. R. Civ. Proc. section 42a on the grounds
 5 that these matters have common parties, factual questions and legal issues in
 6 common and that it would in the interests of judicial efficiency and substantial
 7 justice to have the matters consolidated.

8 This motion is further based upon the memorandum of points and authorities
 9 attached hereto, the declaration of Alisha M. Lee, on the pleadings and papers on file
 10 in each action proposed to be consolidated, on all matters upon which this court can
 11 and should take judicial notice as well as on all matters which may be presented at
 12 the time of hearing of the instant motion.

13 Pursuant to the Court's Standing Order, ARS's counsel has met and conferred
 14 with Plaintiff's counsel to determine that the hearing date selected will not cause
 15 undue prejudice.

16
 17 DATED: May 12, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

18
 19 By: 

20 Stephen H. Turner
 21 Alisha M. Lee
 22 Attorneys for Defendants ARS NATIONAL
 23 SERVICES, INC. and JASON A.
 24 HOWERTON
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Raymond Meyer ("Plaintiff") has filed two identical lawsuits in the same Judicial District alleging a violation of the same statute against the exact same parties. Both actions are grounded in substantially similar factual allegations, and each turns on the adjudication of the same legal questions. Moreover, in each lawsuit the parties are represented by the same attorneys. Accordingly, there can be no question that it would be in the interest of judicial efficiency to have these matters consolidated.

II. STATEMENT OF RELEVANT FACTS

On December 20, 2007, Plaintiff filed a lawsuit against ARS National Services, Inc. and Jason A. Howerton (collectively, "ARS") alleging violations of the Fair Debt Collection Practices Act ("FDCPA").^{1/} Specifically, Plaintiff alleges that ARS failed to disclose ARS's identity and the nature of ARS's business, in violation of 15 U.S.C. § 1692d(6), and failed to disclose that the communications were from a debt collector in violation of 15 U.S.C. § 1692e(11). In addition, Plaintiff alleges that ARS continued to communicate with Plaintiff in an effort to collect the debt, even after receiving written notification that Plaintiff refused to pay the debt, in violation of 15 U.S.C. § 1692c(c). Plaintiff is represented in this action by Fred W. Schwinn, Esq., Consumer Law Center, Inc.

On April 7, 2008, Plaintiff brought another lawsuit against ARS in an action entitled Meyer v. ARS National Services, Inc., et al., United States District Court Case No. C 08-01842 RMW, alleging the same violations of the FDCPA, to wit: ARS failed to disclose ARS's identity and the nature of ARS's business, in violation of 15 U.S.C. § 1692d(6), and failed to disclose that the communications were from a

^{1/}Although the parties have reached a settlement in this case, the issue of what amount of attorneys' fees Plaintiff is owed still remains to be litigated.

1 debt collector in violation of 15 U.S.C. § 1692e(11). (Declaration of Alisha M. Lee,
2 ("Lee Decl."), ¶¶3-5.) Plaintiff is represented in this action by the same attorney, Mr.
3 Schwinn. (Lee Decl., ¶6.)

4
5 **III. CONSOLIDATION IS APPROPRIATE BECAUSE COMMON**
6 **QUESTIONS OF LAW AND FACT EXIST BETWEEN THE TWO**
7 **CASES**

8 The district court has broad discretion under Fed. R. Civ. Proc § 42(a) to
9 consolidate cases pending in the same district. (*Investors Research Co. v. U.S. Dist.*
10 *Court for Cent. Dist. of California*, 877 F.2d 777, 777 (9th Cir. 1989); Fed. R. Civ.
11 Proc 42(a).) In that regard, Fed. R. Civ. Proc 42(a) provides:

12 When actions involving a common question of law or fact
13 are pending before the court, it may order a joint hearing or
14 trial of any or all of the matters in issue in the actions; **it**
15 **may order all the actions consolidated; and it may make**
16 **such orders concerning proceedings therein as may tend**
17 **to avoid unnecessary costs or delay."** [FRCP 42(a)
18 (emphasis added)]

19 Thus, when two actions involve common questions of law and fact, the Court
20 has substantial power to consolidate the cases in order to enhance trial court
21 efficiency, to avoid unnecessary duplication of evidence and procedures and to avoid
22 the substantial danger of inconsistent adjudications. The single essential requirement
23 is the existence of questions of law or fact common to the cases that are to be
24 consolidated. (*Enterprise Bank v. Saettele*, 21 F.3d 233, 235 (8th Cir. 1994).)

25
26 **A. Consolidation Will Further Judicial Efficiency**

27 Cases should be consolidated when so doing will further judicial efficiency.
28 (*Owen v. Labor Ready Inc.* 146 Fed.Appx. 139, 141 (9th Cir. 2005).) In *Owen*, the

1 court held that the trial court should weigh “the saving of time and effort
2 consolidation would produce against any inconvenience, delay, or expense that it
3 would cause.” (*Id.* at p. 141.) In *Dupont v. Southern Pac. Co.* 366 F.2d 193, 195
4 (5th Cir. 1966) the court explained:

5 Trial judges are urged to make good use of Rule 42(a) of
6 the Federal Rules of Civil Procedure where there is
7 involved a common question of fact and law as to the
8 liability of the defendant in order to expedite the trial and
9 eliminate unnecessary repetition and confusion

10 (See also, *E.E.O.C. v. HBE Corp.* 135 F.3d 543, 551 (8th Cir.1998) wherein
11 the court held that it is appropriate to consolidate claims to, “avoid the inefficiency
12 of separate trials involving related parties, witnesses...”)

13 Here, there can be no doubt that consolidating this case with Meyer v. ARS
14 National Services, Inc., et al. would further judicial efficiency. Indeed, the central
15 issues of law and fact are common to both lawsuits. The same witnesses are likely to
16 be called in each case. To be sure, in both cases, the named Plaintiff is identical, and
17 the named defendants are identical. (Lee Decl., ¶¶3-4.) Moreover, Plaintiff is
18 represented by the same counsel in each lawsuit. (Lee Decl., ¶6.) Finally, because
19 each suit is based on an alleged violation of the same statute, and the same sub-
20 sections of that statute, consolidation will surely enhance judicial efficiency and
21 avoid re-litigation of the same essential issues.

22 23 **B. Consolidation Will Avoid The Risk of Inconsistent Rulings**

24 Federal law allows for consolidation of cases where there is a risk of
25 inconsistent rulings. (*E.E.O.C. supra*, 135 F.3d at 551.) Here, there is substantial
26 risk of inconsistent rulings should the instant matters not be consolidated because
27 each case features the same issues, but are currently assigned to two different judges.
28 The most efficient manner to avoid the potential for inconsistency in rulings is to

1 consolidate these matters.
2

3 **IV. CONCLUSION**

4 For the reasons stated herein, Defendants respectfully request that the instant
5 motion be granted and this matter consolidated with the action entitled, Meyer v.
6 ARS National Services, Inc., et al., Case No. C 08-01842 RMW.
7

8 DATED: May 12, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

9
10 By: 

11 Stephen H. Turner
12 Alisha M. Lee
13 Attorneys for Defendants ARS NATIONAL
14 SERVICES, INC. and JASON A.
15 HOWERTON
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DECLARATION OF ALISHA M. LEE

I, Alisha M. Lee, do hereby declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts of the State of California and am an associate at the law firm of Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for Defendants ARS National Services, Inc. and Jason A. Howerton in the instant action, as well as the attorneys of record for Defendants ARS National Services, Inc. and Jason A. Howerton in Meyer v. ARS National Services, Inc., et al., United States District Court Case No. C 08-01842 RMW, which is proposed to be consolidated hereto.

2. I make this declaration in support of Defendants' motion to consolidate cases. This declaration is made of my own personal knowledge, and if called as a witness, I could and would competently testify thereto.

3. The plaintiff in Meyer v. ARS National Services, Inc., et al., United States District Court Case No. C 08-01842 RMW is the same plaintiff as in the instant lawsuit.

4. The defendants named in Meyer v. ARS National Services, Inc., et al., United States District Court Case No. C 08-01842 RMW are the exact same defendants named in the instant lawsuit.

5. In Meyer v. ARS National Services, Inc., et al., United States District Court Case No. C 08-01842 RMW, Plaintiff has made the same allegations under the Fair Debt Collection Practices Act which he has made in the instant lawsuit, to wit: ARS failed to disclose ARS's identity and the nature of ARS's business, in violation of 15 U.S.C. § 1692d(6), and failed to disclose that the communications were from a debt collector in violation of 15 U.S.C. § 1692e(11).

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6. Fred W. Schwinn, Esq., Plaintiff's counsel in Meyer v. ARS National Services, Inc., et al., United States District Court Case No. C 08-01842 RMW, is also representing Plaintiff in the instant lawsuit.


Alisha M. Lee

CERTIFICATE OF SERVICE

I certify that on the 13th day of May 2008, I electronically transmitted the foregoing document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Fred W. Schwinn, Esq.
Consumer Law Center, Inc.
12 South First Street, Suite 1014
San Jose, California 95113-2418
Attorneys for Plaintiff
RAYMOND CHARLES MEYER

By: /s/ Alisha M. Lee

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